# THE IOWA ALLIANCE OF COMMUNITY MENTAL HEALTH CENTERS

**RECOMMENDATIONS TO THE IOWA GENERAL ASSEMBLY**
**CONCERNING MENTAL HEALTH AND DISABILITY SERVICES SYSTEM REDESIGN**

## Senate File 2315

**As amended and passed by the Senate, March 12, 2012**

**March 18, 2012**

## ABOUT THIS COMMENTARY #6

The Iowa Alliance of Community Mental Health Centers (the Alliance) represents 18 centers (see below) certified to serve as safety net providers for those in need of publicly and privately paid services to treat serious mental illnesses in our State. Alliance members primarily deliver child, adolescent, adult and family mental health services, and often substance abuse treatment, across most of Iowa's 99 counties that include well over two-thirds of Iowa's population.

This is the sixth in a series of Alliance commentaries addressing the specific issues confronting Iowa's public policy makers as they undertake to redesign a major component of this state's public and private health care delivery systems.

Commentary #6 addresses SF 2315 as amended and passed by the Senate on March 12, 2012. Several recommendations from Commentary #5 were incorporated into the bill but a number of concerns remain for House consideration.

Blackhawk Grundy CMHC, Waterloo
Southern Iowa MHC, Ottumwa
Richmond Center, Ames
Vera French MHC, Davenport
Berryhill Center for MH, Ft. Dodge
Mideast Iowa MHC, Iowa City
Plains Area MHC, LeMars
North Iowa MHC, Mason City
Abbe Center, Cedar Rapids
Northeast Iowa Behavioral Health, Decorah
EyerlyBall CMHC, Des Moines
Center Associates, Marshalltown
Seasons Center for CMHC, Spencer
West Iowa CMHC, Denison
Orchard Place/Child Guidance Center CMHC, Des Moines
Community Health Centers of Southern Iowa, Leon
Waubonsie MHC, Clarinda
Hillcrest Family Services, Dubuque

The Alliance's final decision regarding support for this legislation will be guided by answers to these fundamental questions. Compared to the present system:

1. Will this legislation, including funding, provide greater accessibility to services delivered by providers held to higher levels of professional performance?
2. Will this legislation, including funding, give stronger guidance to effective services through enhanced case management that includes accreditation, certification, and performance measurement programs?
3. Will this legislation, including funding, improve access to integrated behavioral health and primary care solutions to those eligible for these services?
4. Will this legislation, including funding, create more empowered voices for seeking stable, adequate, and long-term system resources?

# SF 2315, an Act relating to the redesign of publicly funded mental health and disability services.

## Issue #1 SF 2315, Sec. 11, page 7, Regional Service System Management Plan

**Plan Approvals** - The bill requires regions to have their respective management plans approved at the state level for compliance with commission rules as well as those elements mandated elsewhere in the bill. One of the most serious problems in the bill is the inconsistent and confusing proposed delegation of authority to approve initial, annual, and amended Regional Service System Management Plans or RSSMPs.

The Alliance supports the bill's current provisions granting the Mental Health/Disabilities Services Commission (the commission) rule making authority to define the elements required to be in an RSSMP. (*See, for example, Page 8, lines 24-27*) This is an authority that is consistent with the commission's historic policy making responsibilities set out in Iowa Code Section 225C.5.

However, policy implementation is part of the administrative responsibilities of the director of the department of human services as described in Iowa Code Section 217.5. DHS is the agency with the central mission in SF 2315 for overseeing the regions in their delivery of services. The foundational document for how those services are to be delivered is the RSSMP. The accountability for approving those plans and meeting the goals set out in this legislation must be fixed in one place. We believe it should be with the director of the department of human services who is ultimately to be held accountable by the Governor and the General Assembly. SF 2315 does now give the director authority to approve the initial RSSMP. However, the legislation delegates to the commission the sole authority for approving subsequent annual plans and any RSSMP amendments requested during the year. There is no obvious rationale for this inconsistency. As a practical matter, the director would be powerless after approval of the

very first RSSMP. The amendments suggested below are intended to give the director ongoing authority to approve RSSMPs pursuant to recommendations from the commission.

**REQUESTED ACTION ITEM:**

Page 7, by striking lines 15 to 35 and Page 8, lines 1 and 2 and inserting:

A regional service system management plan, annual updates and amendments are subject to the approval of the director of human services pursuant to a recommendation by the state commission.

b. A regional service system management plan shall address a three-year period. The initial plan shall be submitted to the department by April 1, 2014.

c. Each region shall submit an annual update of the region's three-year management plan to the department each year on or before December 1. The annual update shall include a proposed budget for the next fiscal year, any changes to the elements of the management plan as well as actual numbers of persons served, money expended, and outcomes achieved.

d. An amendment to an approved management plan shall be submitted to the department at least forty-five days prior to the amendment implementation.

**Rationale:** *This amendment gives the director authority to approve all plan submissions including the initial plan, annual updates, and amendments. It also ensures a regional always has a three-year plan and that the annual update includes a projected budget for the next fiscal year. Finally, the amendment strikes redundant language concerning the commission's rulemaking authority to determine RSSMP content elements because that authority is already, and more properly, stated on Page 8, lines 24-27.*

**Plan Elements** - The Alliance supports retaining the commission's authority through rule making to designate the elements that must be included in a regional management plan. There are, however, several recommendations we submit for consideration. These are:

**REQUESTED ACTION ITEMS**

Page 10, by striking lines 5 through 8.

**Rationale:** *A region should not be given authority to impose more or less stringent licensing, certification, or accreditation requirements for providers. Sub-section n. is potentially fraught with favoritism and creates unwise opportunities for other pernicious behavior. It could impede efforts to improve the regulatory requirements over providers as described in Sec. 22, page 20. If this sub-section is not deleted, then a region exercising this authority should do so only with the department's approval and only through a plan amendment*.]

Page 10, by striking line 5 and inserting:

<n. Any provider licensing,>

**Rationale**: *This is an alternative proposal if the preceding recommendation is not acceptable. As written this provision does not require the plan to describe the requirements, only the procedures for implementing the requirements. This amendment allows the commission to make rules concerning how those requirements shall be described in the plan.*

Page 10, after line 13 by inserting:

NEW SUBSECTION. The budget for the next fiscal year and an updated three-year budget of operations.

**Rationale:** *The element of a budget should be mandated for inclusion in an annual plan by adding a specific sub-section requiring the plan to include a budget for the fiscal year plus a projected budget for all three years of the plan. Fiscal oversight of the system is one of the key elements of the department's responsibilities. It is also important to departmental planning. See also Page 9, line 31 and following as well as Section 15 on Page 17 which assume such a requirement is already in the bill but for which we can find no specific reference*.

## Issue #2 SF 2315, Sec. 12. Page 10, Financial eligibility requirements.

The Alliance appreciates acceptance of several of its recommendations concerning co-pays and sliding fees schedules but one concern with this section remains.

**REQUESTED ACTION ITEM**

Page 12, line 2, after <services,> by inserting:

<in addition to those resources identified by rule by the commission,>

**Rationale:** *This amendment gives the commission flexibility to add resources in addition to those identified by statute. The list in the bill is very limited.*

## Issue #3 SF 2315, Sec. 13., Page 12, Diagnosis – functional assessment

The Alliance is pleased the Senate accepted a recommendation to amend its study bill to posit authority for selecting functional assessment methodology in the director in consultation with the commission. However, the Senate did not amend its bill to permit providers administering

such assessments to receive payment for that service if the individual was determined by that assessment to not have a diagnosable mental health, behavioral, or emotional disorder.

**REQUESTED ACTION ITEM**

Page 12, line 24, after <disorder> by inserting:

<or may now have, in the opinion of a mental health professional, such a diagnosable condition.

**Rationale:** *What happens if a person presents, is given an assessment, and is found to not have one of those disorders? Does the person have to pay for the assessment? Should the provider be denied payment for conducting the assessment? What if the cause of the symptoms presented is a physical ailment? Or what if a medical doctor has referred a person for assessment in order to exclude certain physical illness diagnoses that the doctor might otherwise consider treating? How does one become eligible for funding if the first appointment(s) at a CMHC is(are) to determine the diagnosis? It is ambiguous and unnecessary.*

## Issue #4 SF 2315, Sec. 28., Page 24, Mental health and disability services regions – criteria.

This section goes to the heart of establishing the regional system. It gives the director sole authority to approve regional configurations and, in consultation with the commission, the power to grant waivers relating to the minimum number of counties or the population parameters. There are, however, two important recommended changes relating to the director's exercise of that authority. First, as currently written, the director shall approve any region that meets statutory requirements. It is feasible that a region could aggregate such a substantial amount of provider resources, for example, so as to make it difficult, if not impossible, for nearby counties wanting the regionalize to do so because of an inability to meet threshold requirements. In other words, the director should have discretion in granting approvals so as to prevent cannibalization of otherwise available resources needed to make another region or regions viable.

We are also concerned about the undefined standard by which the director's exercise of waiver authority is to be measured. The term "convincing" is not a legal term of art but it certainly would seem to denote a very high standard of some kind. Although stating a standard is probably unnecessary, the Alliance recommends the director be required to make a "reasonable finding" that compliance with one of those mandatory criteria is not workable.

Section 4(f) on page 27 is inconsistent with the director's authority in section 2 in that it requires the concurrence of the commission before the "department" (presumably the director) can grant a region approval to begin operations prior to July (no day) 2014. The

criteria the “department” would use to make that decision is very much like the elements in an RSSMP or that the director would use in approving a regional configuration. At the very least they are closely related. Therefore, the approval of this transitional plan should be subject to the same approval authority.

**REQUESTED ACTION ITEM:**

Page 24, by striking in line 16 <shall> and inserting <may>

Page 24, by striking in line 21 <convincing> and inserting <reasonable>

Page 27, by striking line 8 and inserting:

<f. If the director, in consultation with the state>

**Rationale***: The first amendment grants the director discretion to approve or disapprove a regional plan that, while meeting the requirements of subsection 3, could prove to have, for example, a chilling effect on formation of other regions. There are several alternative ways to draft this discretionary authority should it be deemed necessary to proscribe this discretionary authority in some manner. The second amendment would set a more appropriate standard for the director to meet in granting a waiver. The third amendment conforms the director’s authority over implementing regions and their plans with other provisions in SF 2315.*

For further information or expressions of interest in this document please contact Cindy Kaestner or Patrick Schmitz, Alliance co-chairs, or any member of the Alliance's advocacy team:


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